

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JAMES JACKSON	§	
	§	CIVIL CASE NO. 4:19-CV-721
v.	§	
	§	
ROBERT L. WILKIE, ET AL.	§	

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge, this matter having been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On July 21, 2020, the report of the Magistrate Judge, (Dkt. #72), was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss be granted and Plaintiff be directed to file an amended complaint as to only the remaining claims.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court determines that the Magistrate Judge's report should be adopted.

It is therefore **ORDERED** that Defendants' Motion to Dismiss, (Dkt. #40), is hereby **GRANTED** as follows:


- The head of the agency is the only proper defendant in an employment discrimination case; the Secretary of the Department of Veterans Affairs, Defendant Wilkie, in his official capacity, is the only proper defendant to this cause;
- Plaintiff's Count One: The Title VII of the Civil Rights Act of 1964 ("Title VII") Disability Discrimination claim is hereby dismissed as to all Defendants in both their individual and official capacities;

- Plaintiff's Count Two: The Age Discrimination in Employment Act of 1967 ("ADEA") claim is hereby dismissed as to all Defendants in both their individual and official capacities;
- Plaintiff's Count Three: Reprisal claim is hereby dismissed as to the Individual Defendants and Defendant Wilkie in his individual capacity;
- Plaintiff's Count Four and Six: The Rehabilitation Act of 1973 ("RA") claim is hereby dismissed as to the Individual Defendants and Defendant Wilkie in his individual capacity;
- Plaintiff's Count Five: Hostile Work Environment claim is hereby dismissed as to the Individual Defendants and Defendant Wilkie in his individual capacity;
- Plaintiff's Count Six: The Americans with Disabilities Act of 1990 claim is hereby dismissed as to all Defendants in both their individual and official capacities;
- Plaintiff's Count Seven: Weingarten Rights claim is hereby dismissed as to all Defendants in both their individual and official capacities;
- Plaintiff's Count Eight: The Whistleblower Protection Act of 1989 claim is hereby dismissed as to all Defendants in both their individual and official capacities;
- Plaintiff's Count Nine: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 claim is hereby dismissed as to all Defendants in both their individual and official capacities; and
- Plaintiff's Count Ten: The Family and Medical Leave Act of 1993 claim is hereby dismissed as to all Defendants in both their individual and official capacities

It is further **ORDERED** that Plaintiff is instructed to file an amended complaint within thirty (30) days of this memorandum. Plaintiff shall replead those claims solely against Defendant Wilkie, in his official capacity, pertaining only to hostile work environment under the RA (Count 5), disability discrimination under the RA (Counts 4 and 6), and/or reprisal/retaliation under Title VII (Count 3). Should

Plaintiff fail to replead the specified claims, this action will be dismissed as to all Defendants based on the instant Motion to Dismiss. If Plaintiff does replead, Defendant may move anew to dismiss, if Defendant has a basis to do so.

So ORDERED and SIGNED this 20th day of August, 2020.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE